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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-265
	)	
Development of Competition and Diversity in Video Programming Distribution and Carriage	)	

To: The Commission

COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

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Dated: January 25, 1993

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COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

On behalf of the Coalition of Small System Operators, 1/ we hereby submit the following comments in response to the Notice of Proposed Rulemaking in the captioned proceeding (the "NPRM").

The Small System Operators operate cable television systems primarily serving small, rural communities which otherwise would not have cable service because large system operators have avoided these sparsely populated areas. Together, the Small System Operators operate a total of 2,052 systems serving 791,991 subscribers in more than 27 states. A

1/ The Coalition of Small System Operators includes: Midcontinent Media, Inc., Galaxy Cablevision, Vantage Cable, Classic Cable, USA/MW1 Cablesystems, Inc., Buford Television, Inc., Triax Communications Corp., Douglas Communications Corp. II and Star Cable Associates. The Coalition, which has participated in other rulemaking proceedings related to the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), continues to expand. Therefore, the combined numbers of subscribers, systems, etc. are subject to change as the group evolves.

majority of these systems serve fewer than 1,000 subscribers. In fact, approximately 76 percent of the systems serve fewer than 500 subscribers, and the average system with less than 1,000 subscribers serves about 286 subscribers. The average density for these systems with less than 1,000 subscribers is about 38 homes passed per mile, an extraordinarily low figure considering that the average homes passed per mile for the top 100 cable operators is 87. 2/

The Small System Operators typically operate with a much lower net revenue per subscriber than large operators because the higher costs of operating (due to low density, large geographic area covered, multiple headends, etc.) are so much greater than for larger systems. Moreover, the Small System Operators generally do not benefit from economies of scale even though a given Small System Operator may serve in total more than 100,000 subscribers spread over many systems. One area in which the advantages of economies of scale have eluded Small System Operators is program acquisition, largely because many program vendors have resisted their attempts to form buying groups. The Small System Operators urge the Commission to adopt rules that will encourage equal treatment of all operators with respect to program acquisition.

I. A STRICT ATTRIBUTION STANDARD SHOULD BE ADOPTED TO TEST VERTICAL INTEGRATION OF CABLE AND PROGRAMMING ENTITIES

Adoption of the broadcast attribution standards for application to cable operators and program vendors to determine the presence of potentially anti-competitive vertical integration would eviscerate the

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2/ 1992 Cable & Station Coverage Atlas at 5.

intention of the statute. Instead, the Commission should adopt a simpler, broader attribution standard for determining vertical integration: 20 percent equity ownership (applicable to corporations and partnerships) and/or membership on the board of directors.

The broadcast attribution rules are simply not broad enough to effectively regulate anti-competitive conduct by vertically integrated affiliates. For example, application of the single majority shareholder rule to a program vendor would permit a cable operator to own the lion's share of the program vendor's equity through non-voting stock, control up to 49.9 percent of the voting stock, and still not be considered "vertically integrated." See 47 C.F.R. § 73.3555. The use of limited partnership structures also would confound the intent of Congress to check discriminatory conduct if broadcast attribution standards were used. Through the limited partnership vehicle, a cable company could again own virtually all of the equity in a program vendor -- giving the latter a strong incentive to provide discounts on the sale of programming to the cable operator -- but avoid attribution by the label of "limited" rather than "general" partner.

In view of these exceptions that would soon swallow the rule, the Small System Operators urge the Commission to adopt a broader attribution standard, focusing on equity ownership and interlocking directorates as measures of vertical integration. Equity ownership is the critical factor here because the greater the equity ownership that a program vendor has in a cable company (or vice versa), the more they each could profit from anti-competitive conduct. Also, because board membership is crucial to the decision-making of any corporation, interlocking directorates indicate a level of affiliation that could easily result in anti-competitive conduct. For these reasons, the Small System Operators urge the Commission to adopt: (i) 20 percent equity ownership; and/or (ii) board membership as the standards for attribution in the context of determining vertical integration of cable companies.

II. ACCESS TO PROGRAMMING AT COMPETITIVE RATES IS CRITICAL FOR SMALL OPERATORS

Small system operators generally have lower net revenues per subscriber (not to mention fewer overall subscriber revenues), than large operators, and yet they pay more for programming because they cannot qualify for volume discounts. The Commission must strive to develop rules that will promote the ability of small systems to acquire programming on an equal basis with large systems.

One area in particular that has been problematic is the treatment of MMDS and SMATV systems. Many of the Small System Operators own not only traditional cable television systems but also MMDS or SMATV systems. According to the Small System Operators, their MMDS and SMATV operations are treated differently than their traditional cable systems in dealing with programmers. For example, program vendors have often not permitted the Small System Operators to include their SMATV and MMDS systems when calculating the total number of subscribers served by all of the given operator's systems. Subtracting those subscribers served by MMDS or SMATV delivery systems lowers the total number of subscribers served by the operator's systems, thereby reducing any volume discount that would otherwise be available for the programming.

Not only have the Small System Operators not been permitted to include their MMDS and SMATV operations in negotiations for programming for their traditional systems, but they have been made to pay more for the same programming for their MMDS and SMATV systems. In some instances, program vendors have refused altogether to provide programming to the MMDS and SMATV portions of the Small System Operator's systems, instead making them deal with resellers at additional cost and inconvenience.

Program access should be equal and uniformly priced among the systems owned by a single operator, whether the systems happen to be traditional cable systems, MMDS or SMATV. Small systems, which already pay proportionally more for programming because they do not generally qualify for the same level of volume discounts available to the larger MSOs, should not be further penalized by programmers' discrimination against different types of delivery techniques used by the operators. An operator should be entitled to a volume discount based on its total subscribers, regardless of delivery means. Furthermore, program vendors should not be allowed to continue the practice of charging higher prices for SMATV and MMDS portions of a given operator's systems.

III. BUYING GROUPS FOR SMALL OPERATORS SHOULD NOT BE HINDERED

The Small System Operators urge the Commission to refrain from attempting to prohibit volume discounts for programming. The elimination of volume discounts would not serve to reduce programming costs for small operators, only to raise costs for larger ones. Moreover, through a system of rebates or other schemes it is likely that volume discounts for large operators would continue to exist, albeit in different forms.

Instead of limiting the availability of volume discounts for large operators, the Commission should be certain not to hinder the development of co-ops or buying groups for small operators. The Commission should impose neither requirements nor restrictions on buying groups because the impact of any such regulation would likely be disproportionately felt by small operators. For example, while large operators may glean the benefits of volume discounts without even forming a group, the Small System Operators must unite many of their number in order to qualify for similar discounts. For this reason, if the Commission were to impose a requirement such as uniformity of billing on buying groups (see NPRM, ¶ 26), large MSOs would not be effected at all, but small operators would face the administrative burden of making their billing uniform or losing their group discount.

Whether through volume discounts or other mechanisms, small systems which can least afford to pay premium prices for programming must be given the opportunity to purchase programming at a fair price and on equal ground with larger operators. To the extent that small systems receive improved treatment from program vendors, their subscribers will benefit from the systems' enhanced ability to expand program offerings at an affordable price. Expansion of the program menu is particularly important for small rural systems where residents have limited alternative sources of entertainment, news and educational video fare.

IV. SHOWING OF ACTUAL HARM IS NOT REQUIRED BY THE 1992 CABLE ACT TO PROVE DISCRIMINATORY PRICING

Neither the language of the 1992 Cable Act nor the legislative history of the Act suggests that Congress intended to require a showing of harm to competition in order to prove that a vertically integrated cable

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operator is engaging in unfair competition. Instead, any time that a vertically integrated cable operator engages in discriminatory pricing, there is automatically a violation of the Act.

Section 628(b) of the Act broadly prohibits unfair methods of competition, and Section 628(c) sets forth specific conduct which Congress not only deems unfair but also requires the Commission to regulate. Nowhere in Section 628(b) or (c) does Congress suggest that a showing of actual harm to competition should be required in order for the Commission to regulate unfair conduct.

In addition to the statutory language itself, there are other reasons for rejecting this unduly harsh burden of proof. To a small system operator, the administrative costs of pursuing a complaint against a large cable operator or satellite program vendor are daunting. The added burden of requiring proof of actual harm would eliminate the feasibility of bringing such complaints entirely. Moreover, the amorphous nature of economic "harm" would make such a showing particularly difficult. This unduly burdensome standard is not required by the statute, and should not be required by the Commission. Again, the adoption of more burdensome standards generally impacts disproportionately on Small System Operators who can ill afford to spend their marginal profits on costly administrative proceedings.

V. CONCLUSION

Small System Operators face unique challenges in the operation of their facilities. The important service that these systems provide to sparsely populated, rural areas should not be underestimated. Elimination of discrimination by vertically integrated program vendors against small operators and the different types of program distribution systems used by small operators will directly benefit the rural public in improved cable service.

Respectfully submitted,

COALITION OF SMALL
SYSTEM OPERATORS

By [signature]
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Dated: January 25, 1993

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NAME OF OPERATOR	TOTAL # OF SUBSCRIBERS	TOTAL # OF COMMUNITY UNITS	TOTAL # OF STATES SERVED	TOTAL # OF HEADENDS	# OF HEADENDS WITH LESS THAN 1,000 SUBSCRIBERS
Douglas Communications Corp. II	103,090	494	13	437	428
Galaxy Cablevision	54,887	200	6	129	112
MW1/USA Cablesystems, Inc.	37,334	484	16	443	443
Vantage Cable Associates, L.P.	30,737	126	7	126	123
Triax Communications Corp.	326,052	1,075	16	444	361
Buford Television, Inc.	77,206	260	8	168	154
Classic Cable	29,904	78	5	73	65
Midcontinent Media, Inc.	72,502	174	4	170	162
Star Cable Associates	60,279	150	6	62	33

FOR SYSTEMS WITH FEWER THAN 1,000 SUBSCRIBERS

NAME OF OPERATOR	AVERAGE # OF SUBSCRIBERS	AVERAGE # OF HOMES PASSED PER MILE	AVERAGE # OF MILES OF PLANT	AVERAGE # OF ACTIVATED CHANNELS	AVERAGE # OF SUBSCRIBERS PER MILE	AVERAGE PENETRATION
Douglas Communications Corp. II	191	40	8	16	24	60%
Galaxy Cablevision	396	37	19	28	20	54%
MW1/USA Cable Systems, Inc.	84	29	7	21	12	41.3%
Vantage Cable Associates, L.P.	221	45	7.23	21	30	66%
Triax Communications Corp.	364	39	15	22	25	44%
Buford Television, Inc.	322	24	29	24	11	45.83%
Classic Cable	331	51	10	25	39	76.4%
Midcontinent Media, Inc.	240	57	5.85	16	41	72%
Star Cable Associates	429	28	32	26	13.4	47.8%